



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

May 8, 1939

Honorable W. E. Barron
County Attorney
Grimes County
Anderson, Texas

Dear Sir:

Opinion No. 0-474
Re: Validity of city ordinance of
Navasota, Texas, prohibiting
erection of filling stations.

This will acknowledge receipt of your letter of April 23, 1939, in which you submit for the opinion of this Department the following question:

"Does a city or town acting by and through its duly elected councilmen have the authority and is it empowered under the statutes governing cities and towns to refuse to issue a permit for the erection of a filling station in a residential section of such city or town?"

"Does the governing body of a city or town have authority under Articles 1011a to 1011f to designate special sections of the city and prohibit the erection of certain kinds of businesses, namely, filling stations, without the adoption of a general zoning ordinance and the appointment of a zoning commission as required under Article 1011f?"

You attach to your inquiry, a copy of a zoning ordinance passed by the governing body of the city of Navasota, Texas, dated December 13, 1938, the purpose of

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which was to prevent the erection of filling stations within the city of Navasota except within certain designated areas.

Attached to your letter of May 5, 1939, is a supplemental statement of facts reading as follows:

"The city of Navasota, during the month of December, 1938, passed a zoning ordinance, a copy of which is attached to the original brief furnished you. The city council of the city of Navasota acting on a petition of some fifty citizens called a meeting for the purpose of passing the zoning ordinance and passed the same without the statutory fifteen days notice or without notice of any length to anyone.

"A public hearing was not had at the meeting at which the ordinance was passed.

"The city of Navasota had not prior to and has not since the passage of the zoning ordinance appointed a zoning commission as required by statute."

You conclude your supplemental statement of facts by asking the following question:

"Is the ordinance as passed by the city of Navasota a valid ordinance and does it meet the statutory and constitutional requirements?"

Articles 1011a to 1011j, both inclusive, constitute a city's power to adopt a comprehensive zoning law, and provide the manner of its adoption, and lays down the necessary prerequisites to its adoption.

Article 1011d, Revised Civil Statutes of Texas 1925, reads:

"The legislative body of such municipality shall provide for the manner in which

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such regulations and restrictions and the boundaries of such districts shall be determined, established, and enforced, and from time to time amended, supplemented, or changed. However, no such regulation, restriction, or boundary shall become effective until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least 15 days' notice of the time and place of such hearing shall be published in an official paper, or a paper of general circulation, in such municipality."

Article 1011f, Revised Civil Statutes of Texas 1925, reads:

"In order to avail itself of the powers conferred by this Act (Arts. 1011a-1011j), such legislative body shall appoint a commission, to be known as the zoning commission, to recommend the boundaries of the various original districts and appropriate regulations to be enforced therein. Such commission shall make a preliminary report and hold public hearings thereon before submitting its final report, and such legislative body shall not hold its public hearings or take action until it has received the final report of such commission. Where a city plan commission already exists, it may be appointed as the zoning commission."

It is clear that the above mentioned requirements as to notice, length of time required for such notice and hearing thereon are mandatory upon the governing body of a municipality.

The court, in the case of Peters, Mayor et al vs. Gough et al, 85 SW 2nd 515, in discussing the requirements of the above mentioned statutes said:

"These statutory requirements are intended for the protection of the property owner

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and are his safeguards against an arbitrary exercise of the power granted by the statute. Hence it would appear that such preliminary steps required by the statute are essential to the exercise of such jurisdiction. The failure of the council to give the statutory notice of the public hearing prior to the adoption of the ordinance renders the ordinance invalid."

Accepting as true, the facts contained in your statement of facts hereinabove quoted, it is the opinion of this Department and you are so advised, that the ordinance in question is invalid for want of proper notice and opportunity for hearing thereon. Having so answered your third question, it becomes unnecessary for us to further discuss your questions Nos. 1 and 2.

Trusting that this satisfactorily answers your inquiry, we are

Very truly yours

ATTORNEY GENERAL OF TEXAS

BY

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APPROVED:

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